

REMARKS

Claims 1 and 15 have been amended. Support for the amended claims and the new claims may be found at least between line 1 on page 9 and line 9 on page 12 of the Patent Application. No new matter has been added.

In the Office Action, the Examiner indicated that claims 7-13 have been allowed.

In the Office Action, claims 1 and 15 were rejected under 35 U.S.C. § 102(e) as allegedly being obvious over the ETSI publication in view of Trossen, et al. (U.S. Patent Application Publication No. 2003/0157899). Claims 2-3, 6, 14, 16, and 18-24 were rejected under 35 U.S.C. § 103(a) as allegedly being obvious over the ETSI publication and Trossen in view of Koulakiotis, et al. (U.S. Patent Application Publication No. 2003/0104801). Pursuant to the proposed amendments, the Examiner's rejections are respectfully traversed.

To establish a *prima facie* case of obviousness, the prior art reference (or references when combined) must teach or suggest all the claim limitations. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (CCPA 1974). The ETSI publication describes a multicast mode that allows unidirectional point-to-multipoint transmission of multimedia data from a single source point to a multicast group in a multicast area. See §4.2 of the ETSI publication. Users can subscribe to a multicast subscription group and may then discover active or future multicast services. A Home Environment can also join the user to the selected multicast group if the user has previously subscribed to this multicast group. See §4.2.1 of the ETSI publication. The Home Environment broadcasts multicast services to multicast areas, which may be determined based on multicast group members being present in the multicast area. See §5.2.1 of the ETSI publication.

However, the ETSI publication does not describe or suggest any rate splitting techniques. Accordingly, as acknowledged by the Examiner, the ETSI publication does not describe or

suggest assigning one of a plurality of service rates to at least one of a plurality of subscription-based service types, as set forth in independent claims 1 and 15. Furthermore, the ETSI publication does not describe or suggest selecting one of the plurality of service rates for assignment to a subscription-based service type based on network infrastructure requirements and/or the geographical distribution of subscribers, as set forth in independent claims 1 and 15.

Trossen describes assigning data rates based on a measured signal-to-noise ratio. However, Trossen is completely silent with regard to the distributions of either mobile units or subscribers and does not describe or suggest assigning data rates based on these distributions. The Examiner relies upon Koulakiotis to describe various aspects of multicasting. However, Koulakiotis is primarily concerned with charging users for different services and does not discuss rate splitting based on network infrastructure requirements and/or the geographical distribution of subscribers. Koulakiotis therefore fails to remedy the aforementioned fundamental deficiencies of the ETSI publication. Applicants therefore respectfully submit that the cited references fail to teach or suggest all the limitations set forth in the pending claims.

Applicants further submit that the Examiner has not provided a reason why a person of ordinary skill in the art would be motivated to modify Trossen and/or the ETSI publication to include assigning data rates based on the distributions of either mobile units or subscribers. To the contrary, the ETSI publication is only concerned with locating multicast group members within multicast areas. Accordingly, the ETSI publication provides no suggestion or motivation for modifying the prior art of record to include performing rate splitting based on network infrastructure requirements and/or the geographical distribution of subscribers, as set forth in the pending claims.

For at least the aforementioned reasons, Applicant respectfully submits that the pending claims are not obvious over the prior art of record and requests that the Examiner's rejections of claims 1-3, 6, 14-16, and 18-24 under 35 U.S.C. § 103(a) be withdrawn.

For the aforementioned reasons, it is respectfully submitted that all claims pending in the present application are in condition for allowance. The Examiner is invited to contact the undersigned at (713) 934-4052 with any questions, comments or suggestions relating to the referenced patent application.

Respectfully submitted,

Date: January 8, 2008

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